

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

05 11614 WGY

JOHN HANCOCK LIFE INSURANCE
COMPANY,

Plaintiff,

v.

VESTMONT LIMITED PARTNERSHIP,
VESTMONT LIMITED PARTNERSHIP II,
VESTMONT LIMITED PARTNERSHIP III,
and VESTERRA CORPORATION d/b/a
MONTGOMERY SQUARE PARTNERSHIP,

Defendants.

MAGISTRATE JUDGE MBB

CIVIL ACTION NO. _____

RECEIPT # 65989
AMOUNT \$ 250
SUMMONS ISSUED 4
LOCAL RULE 4.1 1
WAIVER FORM 1
MCF ISSUED 1
BY DPTY. CLK. FM
DATE 8/3/05

COMPLAINT

Introduction

1. This is an action for a breach of contract brought by plaintiff John Hancock Life Insurance Company ("John Hancock") against defendants Vestmont Limited Partnership, Vestmont Limited Partnership II, Vestmont Limited Partnership III, and Vesterra Corporation d/b/a Montgomery Square Partnership whereby John Hancock seeks compensation for the Defendants' breach of a Commitment for a First Mortgage Loan (the "Loan Commitment"), pursuant to which John Hancock agreed to provide, and Defendants agreed to obtain from John Hancock, a mortgage loan in the amount of approximately \$32,000,000 (the "Loan"). Defendants have breached the Loan Commitment, *inter alia*, by refusing to close the Loan on or before August 1, 2005 as required by the terms of that agreement.

Parties

2. Plaintiff John Hancock Life Insurance Company (“John Hancock”) is a company, duly formed and existing under the laws of the Commonwealth of Massachusetts, that maintains its corporate headquarters in Boston, Suffolk County, Massachusetts. John Hancock is one of the nation’s leading insurance companies, providing a broad array of insurance and investment products to retail and institutional customers, primarily in North America. The Real Estate Investment Group at John Hancock, in particular, provides variable rate commercial mortgage loans on substantial properties, including, *inter alia*, large residential apartment complexes.

3. Upon information and belief, defendant Vestmont Limited Partnership is a limited partnership duly formed and existing under the laws of the Commonwealth of Pennsylvania, that maintains its principal place of business at 490 Norristown Road, Blue Bell, Pennsylvania. Vestmont Limited Partnership is a general partner of Montgomery Square Partnership.

4. Upon information and belief, defendant Vestmont Limited Partnership II is a limited partnership duly formed and existing under the laws of the Commonwealth of Pennsylvania, that maintains its principal place of business at 490 Norristown Road, Blue Bell, Pennsylvania. Vestmont Limited Partnership II is a general partner of Montgomery Square Partnership.

5. Upon information and belief, defendant Vestmont Limited Partnership III is a limited partnership duly formed and existing under the laws of the Commonwealth of Pennsylvania, that maintains its principal place of business at 490 Norristown Road, Blue Bell, Pennsylvania. Vestmont Limited Partnership III is a general partner of Montgomery Square Partnership.

6. Upon information and belief, defendant Vesterra Corporation is a corporation duly formed and existing under the laws of the Commonwealth of Pennsylvania, that maintains its principal place of business at 490 Norristown Road, Blue Bell, Pennsylvania. Vesterra Corporation is the general partner of Vestmont Limited Partnership, Vestmont Limited Partnership II, and Vestmont Limited Partnership III. Vestmont Limited Partnership, Vestmont Limited Partnership II, Vestmont Limited Partnership III, and Vesterra Corporation hereinafter are collectively referred to as "Montgomery."

Jurisdiction and Venue

7. This Court has jurisdiction in this matter pursuant to 28 U.S.C. § 1332(a) because there is complete diversity of citizenship between the parties, and the amount in controversy in this action exceeds \$75,000, exclusive of interest and costs.

8. Venue in this district is proper pursuant to 28 U.S.C. § 1391(a)(2) in that a substantial part of the events giving rise to this Complaint occurred in this district and, further, because Condition 35 of the Loan Commitment states that it "shall be deemed to be executed and performable in and governed by the substantive laws of Massachusetts."

Facts

9. Montgomery is the owner of a 256-unit residential apartment complex located in North Wales, Pennsylvania, known as "Avenel at Montgomery Square" (the "Avenel Apartments"). On or about August 17, 2004, John Hancock and Montgomery entered into a binding Loan Commitment whereby John Hancock agreed to finance, and Montgomery agreed to accept, a mortgage loan on the Avenel Apartments in the amount of \$32,000,000 (the "Loan").

10. The terms and conditions of the Loan Commitment are set forth in Montgomery's July 30, 2004 "Application to John Hancock Life Insurance Company for a First Mortgage

Loan” and the exhibits and supplements thereto (collectively, the “Application”), which Application was accepted by John Hancock on August 17, 2004. Condition 27(b) of the Loan Commitment specifically provides that, “[i]n the event that John Hancock accepts this Application . . . and forwards an executed copy thereof to [Montgomery], [Montgomery] will borrow [the Loan].”

11. In reliance on Montgomery’s commitment to accepting the Loan, John Hancock allocated and set aside assets for the purpose of funding the Loan and made commitments to third parties based thereon.

12. As acknowledged by Montgomery in the Loan Commitment, the interest rate on the Loan ordinarily would have been locked in for a period of only sixty (60) days, and Montgomery would have been required to close on the Loan within such period. The Loan Commitment, however, allowed Montgomery to lock in the interest rate on the Loan for a period of up to three hundred sixty-five (365) days before it closed the Loan. The extension of the rate lock period was beneficial to Montgomery because it allowed Montgomery to take advantage of then-existing interest rates and protect itself from future, potentially unfavorable rate fluctuations.

13. The terms of the Loan Commitment obligate Montgomery to close on the Loan with John Hancock on or before August 1, 2005. However, the Loan Commitment also affords Montgomery the opportunity to extend the closing date up to six (6) times for periods of up to thirty (30) days each, *i.e.*, for an aggregate period of one hundred eighty (180) days. To extend the closing date, Montgomery must notify John Hancock in writing no later than ten (10) days prior before the closing date that it had elected to extend the closing date.

14. The terms of the Loan Commitment further obligate Montgomery, *inter alia*, to provide John Hancock with various information and materials pertinent to the Loan, including all proposed instruments and documents, at least twenty-one (21) days prior to the scheduled Loan closing date.

15. Notwithstanding the terms of the Loan Commitment, Montgomery did not provide John Hancock with the required information and materials pertinent to the Loan prior to the scheduled Loan closing date.

16. Notwithstanding the terms of the Loan Commitment, Montgomery did not close on the Loan on or before the scheduled closing date of August 1, 2005. Nor has Montgomery ever notified John Hancock that it was exercising its right to extend that closing date.

17. Upon information and belief, notwithstanding the terms of the Loan Commitment, Montgomery has no intention of closing the Loan with John Hancock now or in the future.

Claim

**COUNT I
(Breach of Contract)**

18. John Hancock hereby repeats and incorporates herein the allegations set forth in Paragraphs 1 through 17 of the Complaint, *supra*.

19. The Loan Commitment constitutes a valid and binding agreement between the parties. John Hancock has performed all of its relevant obligations under the Loan Commitment.

20. Condition 30(d) of the Loan Commitment expressly provides, *inter alia*, that “if the Loan shall not have been Closed by the Closing Date or as the same may be extended . . . John Hancock shall be entitled to recover from [Montgomery] all damages, losses, costs and expenses suffered or incurred by John Hancock as a result of [the failure to close the Loan].”

21. Montgomery has breached its obligations to John Hancock under the Loan Commitment, *inter alia*, by failing to provide John Hancock with the required information and materials pertinent to the Loan prior to the scheduled closing date of August 1, 2005, and by failing to close on the Loan as required on or before that date.

22. As a direct, proximate and foreseeable result of Montgomery's various breaches of the Loan Commitment, John Hancock has suffered, and continues to suffer, losses and monetary damages in an amount to be determined.

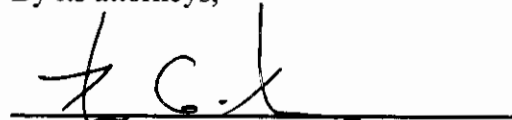
Prayer for Relief

WHEREFORE, John Hancock respectfully requests that this Court:

- (a) enter a final judgment in its favor and against Montgomery;
- (b) award John Hancock its losses and monetary damages, including interest, costs and attorney's fees, to which it is entitled under the Loan Commitment and by law; and
- (c) grant such other and further relief as the Court deems appropriate in the circumstances.

JOHN HANCOCK LIFE INSURANCE
COMPANY

By its attorneys,



Brian A. Davis (BBO No. 546462)
Lisa M. Gaulin (BBO No. 654655)
CHOATE, HALL & STEWART LLP
Two International Place
Boston, Massachusetts 02110
Tele: 617-248-5000
Fax: 617-248-4000

Date: August 3, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) John Hancock Life Insurance Company v. Vestmont Limited Partnership
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☒ I. 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950.
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 480, 490, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
YES ☐ NO ☒
If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
Eastern Division ☒ Central Division ☐ Western Division ☐
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
YES ☐ NO ☐
- (PLEASE TYPE OR PRINT)
ATTORNEY'S NAME Brian A. Davis, Lisa M. Gaulin
ADDRESS Two International Place, Boston, MA 02110
TELEPHONE NO. (617) 248-5000

44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS John Hancock Life Insurance Company (b) County of Residence of First Listed Plaintiff <u>Suffolk County, MA.</u> (EXCEPT IN U.S. PLAINTIFF CASES) (c) Attorney's (Firm Name, Address, and Telephone Number) See Attached	DEFENDANTS Vestmont Limited Partnership, Vestmont Limited Partnership II, Vestmont Limited Partnership III, and Vesterra Corporation d/b/a Montgomery Square Partnership - County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED. Attorneys (If Known)
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II. BASIS OF JURISDICTION (Place an "X" in One Box Only) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant) (For Diversity Cases Only) <table style="width: 100%;"> <tr> <td style="width: 33%;">Citizen of This State</td> <td style="width: 10%;">PTF <input checked="" type="checkbox"/> 1</td> <td style="width: 10%;">DEF <input type="checkbox"/> 1</td> <td style="width: 47%;">Incorporated or Principal Place of Business In This State</td> <td style="width: 10%;">PTF <input type="checkbox"/> 4</td> <td style="width: 10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input checked="" type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
Citizen of This State	PTF <input checked="" type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														


IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN (Place an "X" in One Box Only)						
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): <u>28 U.S.C. § 1332(a)</u> Brief description of cause: <u>Breach of Contract</u>
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VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions): JUDGE _____	DOCKET NUMBER _____
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DATE 08/03/2005	SIGNATURE OF ATTORNEY OF RECORD 
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FOR OFFICE USE ONLY				
RECEIPT # _____	AMOUNT _____	APPLYING IFP _____	JUDGE _____	MAG. JUDGE _____